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No. 80-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO
On the relation of PEDRO BAREZ, SECRETARY,
DEPARTMENT OF LABOR AND HUMAN RESOURCES,
Respondent.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

RESPONSE OF COMMONWEALTH OF PUERTO RICO TO SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Brief for the Secretary of Labor as Amicus Curiae dated April 6, 1981, in Commonwealth of Puerto Rico v. Louis Bramkamp, et al., No. 79-7777 (2d Cir., argued February 4, 1981)

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Response of Commonwealth of Puerto Rico to Supplemental Brief In Support of Petition for Writ of Certiorari

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Respondent Commonwealth of Puerto Rico submits this response to petitioners' Supplemental Brief. The Supplemental Brief in Support of Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit was filed with the Court on May 1, 1981, and was received by counsel for respondent on May 4, 1981. According to petitioners, the Supplemental Brief is submitted pursuant to Supreme Court Rule 22.6. That Rule provides that any party may file a supplemental brief at any time while a petition for writ of certiorari is pending "calling attention to new cases or legislation or other intervening matter not available at the time of the party's last filing."

The occasion for the filing of petitioners' Supplemental Brief pursuant to Rule 22.6, "the intervening matter," is the filing of an *amicus curiae* brief by the U.S. Secretary of Labor

in a companion action in the United States Court of Appeals for the Second Circuit.[1] Remarkably, petitioners did not provide this Court a copy of the Secretary's *amicus* brief but instead petitioners have filed a Supplemental Brief which deals with alleged shortcomings of the Secretary's *amicus* brief. Petitioners' Supplemental Brief thus takes on the character of a presentation of Hamlet without the Prince of Denmark. We cure this flaw by appending hereto a copy of the Secretary's *amicus* brief filed on April 6, 1981. The Secretary therein concludes that "federal policy considerations do not weigh against granting Puerto Rico standing to sue as *parens patriae.*" Appendix, at 10a.

ARGUMENT

The Complaint System Established by the U.S. Department of Labor to Investigate and Resolve Employee Complaints Against Alleged Employer Violations of Federal Labor Certification Regulations Is Not Designed to Redress Puerto Rico's Complaint of Industry-Wide Resistance to Employment of Puerto Rican Workers.

Petitioners attempt on Supplemental Brief an additional argument to support grant of petition for writ of certiorari, viz., permitting the Commonwealth to sue as *parens patriae* in cases like this "will unnecessarily clog the federal courts with cases that the complaint system was created to resolve." Supplemental Brief, at 2-3. However, it is the Secretary of Labor who has the principal federal responsibility for administration of the

[1] Commonwealth of Puerto Rico v. Louis Bramkamp, et al. No. 79-7777 (2d Cir. Appeal argued February 4, 1981)is a companion to the instant case, both cases being *parens patriae* actions by the Commonwealth of Puerto Rico against defendant apple growers for alleged mistreatment of Puerto Rican workers by Virginia and New York growers during the 1978 East Coast apple harvest. On February 5, 1981, the day after oral argument in the *Bramkamp* case, the clerk on the request of the panel which heard the case invited the Solicitor General "to file an amicus brief on behalf of the appropriate government agency or agencies on the issues involved in the appeal." On April 6, 1981, the Secretary of Labor filed an amicus brief.

federal-state employment service system established under the Wagner-Peyser Act and who performs a critical role in certifying use of temporary foreign workers, and he asserts that his complaint procedures are not designed to cope with allegations of industry-wide conduct:

> Although an aggrieved employee may obtain back pay through the complaint system by settlement or through threat of denial of access to the employment service system or of future temporary labor certification, the complaint system does not contemplate injunctive relief or attendant contempt proceedings.
>
> Moreover, regardless of the efficacy of the system in handling individual complaints, these procedures were not intended to redress Puerto Rico's allegations of systemic mistreatment of Puerto Rican workers. The allegations in this complaint illustrate the difficulty the Department would have in investigating an alleged pattern of misconduct involving hundreds of workers and dozens of employers spread over one or more states.

Amicus Brief for the Secretary of Labor, Appendix at 8a-9a.

The Secretary is clearly correct when he asserts that "the complaint system does not contemplate injunctive relief or attendant contempt proceedings," Appendix, at 8a, and, equally, petitioners are simply wrong in stating that "the USDOL does have the authority to go into court to seek injunctive relief and attendant contempt proceedings itself." Supplemental Brief at 3-4, n. 2.

The Secretary of Labor administers the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, involving wage and hour and child labor provisions, and the Secretary is specifically authorized by Congress to seek injunctions in U.S. district courts to enforce minimum wage and hour standards under that Act. 29 U.S.C. § 217. The Secretary also administers the Farm Labor Contractor Registration Act, 7 U.S.C. § 2041-2053, regulating the activities of contractors for the services of migrant agricultural laborers, and the Secretary is specifically authorized by Congress to petition any appropriate U.S. district court for

injunctive relief against any violation of the provisions of the Act. 7 U.S.C. § 2050a(c). Similarly, the Secretary's authority to seek enforcement in U.S. courts of appeal of final orders of the Occupational Safety and Health Review Commission is spelled out in 29 U.S.C. § 660(b). The relevant statutes in the instant case are the Wagner-Peyser Act, 29 U.S.C. §§ 49-49k, and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. Nowhere in those statutes is the Secretary authorized to seek injunctive relief against employers for alleged violations of regulations relating to treatment of domestic migrant laborers in the interstate clearance system.

Western Colorado Fruit Growers Ass'n v. *Marshall*, 473 F.Supp. 693 (D. Colo. 1979), the single case cited by petitioners for the proposition that the Secretary "has sought [injunctive relief] on previous occasions," Supplemental Brief at 4, n. 2, is inapposite. In *Western Colorado*, the Secretary had been haled into court as defendant and took that occasion to *counterclaim* for an injunction prohibiting plaintiff from interfering with defendant's administration of the interstate clearance system. Were the Secretary to go into court as a plaintiff to enjoin a grower from violating labor certification regulations, he would be unable to point to a grant of jurisdiction in the court to entertain the cause.

Petitioners point out that under the Employment Service Complaint System a complaint filed by an aggrieved individual is investigated by the state employment service in the state in which the alleged violation occurred. Petitioners thus argue that a labor supply state, such as the Commonwealth of Puerto Rico in the instant case, does not have a role in the investigation of complaints by Puerto Rican workers. But the interest of the Commonwealth of Puerto Rico lies not in after-the-fact remedies—its complaint does not seek money damages—but in being able to refer Puerto Rican workers to jobs in future East Coast apple harvests. Even if individual Puerto Ricans based in the Commonwealth could effectively utilize the administrative complaint procedure against growers based in Virginia, it is simply not designed to handle industry-wide conduct which affects Puerto Rico's right to refer workers in future seasons.

The remainder of petitioner's Supplemental Brief argues facts, the source of the facts being an affidavit in other litigation and an undated communication between petitioner's counsel and a Virginia state employment official. None of these facts is part of the record in the instant case. Thus, at pages 5 through 7 of the Supplemental Brief, petitioners refer to and argue from an affidavit filed on August 11, 1980 by Mr. Kenneth Hamlett, an official of the U.S. Department of Labor, in *Rios, et al.* v. *Marshall, et al.*, No. 79 Civ. 5711 (U.S. District Court for the Southern District of New York). Mr. Hamlett's affidavit states, in part, that 120 complaints were filed by Puerto Rican workers as a result of their experiences in the 1978 New York apple harvest and that "In all cases, New York State was unable to substantiate the complaints of those workers." Supplemental Brief, at p. 5. With respect to Virginia, petitioners assert that 178 Puerto Ricans who worked in Virginia in the 1978 apple harvest filed complaints and, again, "in all cases the Virginia Employment Commission was unable to substantiate the complaints of those workers." Supplemental Brief, at 5-6.

Manifestly this information cannot properly be considered by the Court in connection with the instant case.[2] Apart from not being in the record, it is not "intervening matter not available at the time of the party's last filing," as required by Rule 22.6. Petitioners' last filing was its Petition for Writ of Certiorari filed on February 2, 1981, and certainly the Puerto Ricans' lack of success with the New York and Virginia state employment services was available at that time.

In any event the argument is wide of the mark. The complaint alleged against the growers a pattern of conduct in refusal to hire and early termination of Puerto Ricans who appeared for work in the orchards. The complaint further alleged that some 1300 Puerto Ricans who had signed up for jobs in the 1978 apple harvest never left Puerto Rico because the U.S. Department of Labor advised Secretary Quiros that many growers had refused to employ those Puerto Ricans who had already arrived (Par. 64, Second Amended Complaint).

[2] See Adickes v. Kress & Co., 398 U.S. 144, 157, n. 16 (1970).

The concern of the Commonwealth of Puerto Rico, and its complaint in the instant case, is the widespread pattern of conduct by defendant growers directed against Puerto Rican workers. Administrative complaints brought by individuals cannot remedy the injury to its quasi-sovereign interest alleged here by the Commonwealth, viz., being deprived by defendants of its right to participate effectively in the Federal Employment Service System and to serve as a labor supply state in coming years for unemployed migrant farm workers in connection with a major crop.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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